FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUN 30 1998

Dan Cohen, Treasurer
Association of Trial Lawyers of America
Political Action Committee
1050 31st St., N.W.
Washington, D.C. 20007

RE: MUR 4761

Dear Mr. Cohen:

On June 23, 1998, the Federal Election Commission ("the Commission") found that there is reason to believe the Association of Trial Lawyers of America Political Action Committee and you, as treasurer, violated 2 U.S.C. § 441a(a)(2)(C), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

which gives separate contribution limitations to "a single political committee established or financed or maintained or controlled by a national committee of a political party and [to] a single political committee established or financed or maintained or controlled by the State committee of a political party . . . ." *See also* 11 C.F.R. § 110.3(b)(1)(i)-(ii).

The Act, however, provides no specific exemption from contribution limitations for political committees of political parties at the county or other subordinate level of a party organization within a state.[1] Accordingly, the Commission has set forth the following presumption: "All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee." 11 C.F.R. § 110.3(b)(3). This regulation, when read together with 11 C.F.R. §§ 110.1(d)(1), 110.2(d)(1) and 110.3(a)(1), also means that a state party committee and its local affiliates together may receive a maximum of $5,000 per year from any one person or multicandidate committee. *See Campaign Guide for Political Party Committees* at 9 (1996). The regulations go on to state, however, that the presumption of affiliation (and thus a single contribution limit) shall not apply if the "political committee of the party unit in question has not received funds from any other political committee established, financed, maintained, or controlled by any party unit," *and* the "political committee of the party unit in question does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of any other party unit or political committee

1 A subordinate committee is "any organization which is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the direction or control of the State committee." 11 C.F.R. § 100.14(b).

established, financed, maintained, or controlled by another party unit." 11 C.F.R. § 110.3(b)(3)(i)-(ii).

In Advisory Opinion ("AO") 1978-9, the Commission analyzed the relationship of county party committees in Iowa to the Iowa Republican State Central Committee through the use of the two factors listed in Section 110.3(b)(3), and concluded that they were not affiliated. The Commission observed that many of the county committees sent funds to the state committee, but that these funds were not deposited in the state committee's federal account. In addition, the county committees received funds from the state committee only in the form of monies raised through joint fundraising. The Commission noted that the transfer of funds raised through joint fundraising is specifically permitted by 2 U.S.C. § 441a(a)(5)(A), and concluded that the committees had not received funds from each other for the purposes of the regulation. The Commission also stated that the contributions by the county committees to federal candidates were not made in cooperation, consultation or concert with, or at the request or suggestion of, the state committee. Accordingly, the Commission concluded that the presumption at Section 110.3(b)(3) did not apply. Based in addition upon the state committee's representations that the county committees were created pursuant to state statute and not established by the state committee, as well as the general lack of control by the state committee over the county committees, the Commission held that the county committees were separate committees with their own contribution limits.[2]

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2 In subsequent enforcement matters involving state and subordinate party committees that discussed whether the first condition at Section 110.3(b)(3) was satisfied, the Commission has interpreted a party committee's "recei[pt of] funds," *see* Section 110.3(b)(3)(i), as limited to funds deposited into that committee's federal account. *See, e.g.*, Matter Under Review ("MUR") 2938 (deposit of funds received from a county party committee into a state party committee's non-federal account does not prevent the presumption of affiliation from being overcome); MUR 3054 (presumption

B. Factual Background

The Association of Trial Lawyers of America Political Action Committee ("ATLA-PAC") disclosed contributions to the 21st Century Political Action Committee and to the Texas Democratic Party ("State Committee") of $5,000 each during the 1996 October Monthly reporting period. During the 1996 12 Day Pre-General reporting period, ATLA-PAC disclosed $5,000 contributions to the Bexar County Democratic Party, the Dallas County Democratic Party, the Galveston County Democratic Party, the Harris County Democratic Party, the Jefferson County Democratic Party, and the Travis County Democratic Party. On May 21, 1997, the Reports Analysis Division ("RAD") sent Requests for Additional Information ("RFAIs") notifying ATLA-PAC that 2 U.S.C. § 441a(a) precludes a multicandidate political committee from making contributions to another political committee and its affiliates in excess of $5,000 per calendar year. On June 5, 1997, ATLA-PAC responded that, prior to making the contributions, "it was represented to ATLA-PAC that [the Texas Democratic county committees] were independently run, controlled and financed." ATLA-PAC stated that it understood that the committees had demonstrated their independence from the State Committee.

On June 12, 1997, RAD sent a Second Notice to ATLA-PAC that local party committees within a state and the state party committee are presumed to be affiliated and share one contribution limit as a single political committee. ATLA-PAC was advised that the recipient committees should be notified and refunds requested of the amounts in excess of $5,000. In a response dated June 23, 1997, ATLA-PAC provided copies of letters assertedly sent to the local

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of affiliation does not apply because, *inter alia*, sole transfers between state party committee and county party committee were from state committee's non-federal account to county committee's non-federal account).

county committees requesting refunds of the contributions.[3] By letter dated July 1, 1997, ATLA-PAC stated that it would disclose any such refunds on the report covering the period in which they were received. No refunds have been disclosed to date.

C. Analysis

The primary issue in this matter is whether the Texas Democratic state and named county committees are affiliated and, hence, subject to a common contribution limit of $5,000 per calendar year. The question of affiliation turns on the relationship between the State Committee and the county committees and on the county committees' relationship to each other. The available information supports the presumption of affiliation among these state party and subordinate party committees contained in the Commission's regulations.

As stated above, the presumption of affiliation is applicable to all political committees established, financed, maintained, or controlled by a state party committee and by subordinate state party committees. *See* 11 C.F.R. § 110.3(b)(3). Stated succinctly, the import of this provision is that "contributions made by a State party committee and by subordinate party committees are presumed to be made by a single committee."[4] Explanation and Justification for 11 C.F.R. § 110.3(b)(3), 54 Fed. Reg. 34102 (1990). The presumption does not apply if two conditions are met: (1) the political committee of the party unit in question has not received funds from another party unit's political committee; *and* (2) the political committee does not

3 ATLA-PAC's letters to the county party committees requesting refunds were dated June 18, 1997, over eight months after it made the contributions, and approximately one month after being notified by RAD of the apparent violation.

4 As mentioned, this provision also means that contributions *received* by a State party committee and by subordinate party committees are presumed to be *received* by a single committee.

make its contributions in cooperation, consultation or concert with, or at the request or suggestion of another party unit or its political committees. *See* 11 C.F.R. § 110.3(b)(3)(i)-(ii).

As previously discussed, in AO 1978-9 the Commission applied these two factors in analyzing the relationship between the Iowa Republican State Central Committee and the Republican county central committees in the state. Although many of the county committees sent funds to the state committee, the Commission nevertheless determined that the first condition was satisfied, observing that these funds were not deposited in the state party's *federal* account. Because the county committees, in accordance with the second condition, did not appear to make their federal contributions in cooperation with or at the request of the state committee, the Commission found that the presumption of affiliation did not apply.

In the present matter, focusing only on monies reported as being deposited into the federal accounts of the State Committee and the Texas Democratic county committees, there appear to have been significant transfers of funds among these committees in 1996. During 1996 the State Committee transferred a total of $83,236 to the county committees, and the county committees transferred a total of $108,543 to the State Committee.

In earlier enforcement matters, the Commission has made findings of affiliation between state and subordinate party committees where lesser amounts were involved in the intra-party transfers, as well as where the transfers were characterized as quota or dues payments from one committee to another. In MUR 953, the Commission found that the presumption of affiliation applied because a state committee, the Republican Party of Wisconsin, had received transfers of funds totaling $21,226 from 51 county party committees in Wisconsin during one year as a result of sharing agreements between it and the county party committees. Further, the state committee

had made transfers to 17 county committees totaling $21,226 in the same year. In MUR 1613, the Commission made a finding of affiliation between the Michigan Republican State Committee and three Republican county party committees, based in part on transfers of funds by the county committees to the state committee's federal account that had been made pursuant to a voluntary quota system. *See also* MUR 3054. In accordance with the Commission's previous findings that transfers of funds between the federal accounts of state and county party committees prevent such committees from avoiding the presumption at 11 C.F.R. § 110.3(b)(3), the transfers of federal monies between the Texas Democratic county party committees and the State Committee support a presumption of affiliation.

There appear to be no Texas statutes prohibiting or limiting the State Committee from financing subordinate party committees or otherwise exerting substantial control over them. Texas election law does cover the establishment and composition of the county executive committees, *see, e.g.,* Tex. Elec. Code Ann. § 171.022 (West 1997), but it does not appear to address any aspect of the maintenance, control or financing of subordinate party committees by the respective state party committee, or vice versa.

An attachment to the State Committee's 1987 Statement of Organization includes the following statements: "The County Democratic Party committees of the Texas Democratic Party are neither established, controlled, nor financed by the State Party Committee. They do not receive funds from the State Party Committee, nor does the State Committee control their expenditures." While these claims may have been accurate at the time they were made, it appears that transfers of federal funds between the State Committee and the county committees generally started to occur after the county committees registered as political committees with the

Commission (most registered in the early 1990s) and have continued up to the present. According to reports filed with the Commission, during the last two election cycles, the State Committee transferred $365,543 in federal funds to the county party committees involved in this matter, and the county committees transferred federal monies to the State Committee in the amount of $108,563. Accordingly, the State Committee and the county committees appear to have been partially financed by transfers of federal funds to each other.

In addition, six of the seven county party committees have listed the "Texas Democratic Party" or "Texas Democratic Party-Federal" as an "Affiliated Committee" in their original Statements of Organization filed with the Commission. None of these county committees has ever filed any subsequent amendments claiming disaffiliation with the State Committee, or offered any explanation that might serve to reconcile their current position with the information they provided upon registering as political committees with the Commission.

In consideration of the foregoing, it is the view of the Commission that the facts of the instant matter support a finding of affiliation. The large transfers of federal funds among the Texas Democratic state and county party committees prevent them from avoiding the application of the presumption in 11 C.F.R. § 110.3(b)(3), and raise questions as to whether the county committees are to some extent controlled by the State Committee. As affiliated committees, they were limited to receiving $5,000 in 1996 from any person or multicandidate political committee.

As a qualified multicandidate committee, ATLA-PAC was restricted to an aggregate contribution limit of $5,000 as to all of the affiliated committees. ATLA-PAC reached this limit on September 30, 1996, when it contributed $5,000 to the 21st Century Political Action Committee. Therefore, ATLA-PAC's subsequent contributions to the State Committee and to

the six other county party committees, totaling $35,000, appear to have constituted excessive contributions.

III. CONCLUSION

Based on the foregoing, it appears that ATLA-PAC made excessive contributions in 1996. Accordingly, there is reason to believe that the Association of Trial Lawyers of America Political Action Committee and Dan Cohen, as treasurer, violated 2 U.S.C. § 441a(a)(2)(C).